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Supreme Court, U.S.
FILED
FEB 23 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

NO. _____

JORGE SALGADO,
Petitioner

VS.

UNITED STATES OF AMERICA,
Respondent

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

JOSEPH A. CONNORS III
Counsel of Record
804 Pecan
McAllen, Texas 78502-5838
(512) 687-8217

ATTORNEY FOR PETITIONER

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Supreme Court of the United States

No. A-546

JORGE SALGADO,
Applicant,

v.

UNITED STATES

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for the applicant,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled case be, and the same is hereby, extended to and including March 5, 1987.

/s/ John Paul Stevens
Associate Justice of the Supreme Court of the United States

Dated this 30th day of January, 1987.

JUDGMENT — ORAL ARGUMENT

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

December 5, 1986.

Before

Hon. RICHARD A. POSNER, Circuit Judge
Hon. JOEL M. FLAUM, Circuit Judge
Hon. WILLIAM J. CAMPBELL, Senior District Judge*

UNITED STATES OF AMERICA, Plaintiff-Appellee, No. 85-3209 vs. JORGE SALGADO, Defendant-Appellant.	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 85 CR 357 John A. Nordberg, Judge

This cause was heard on the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

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* The Honorable William J. Campbell of the Northern District of Illinois, sitting by designation.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, in accordance with the opinion of this Court filed this date.

In the
United States Court of Appeals
For the Seventh Circuit

No. 85-3209

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.

JORGE SALGADO,
Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Illinois,
Eastern Division.
No. 85 CR 357—John A. Nordberg, Judge.

ARGUED SEPTEMBER 12, 1986—
DECIDED DECEMBER 5, 1986

Before POSNER and FLAUM, Circuit Judges, and CAMPBELL, Senior District Judge.*

POSNER, Circuit Judge. A jury convicted Salgado of federal narcotics offenses, and he was sentenced to 20 years in prison, fined $500,000, and ordered to serve a special

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* Hon. William J. Campbell of the Northern District of Illinois, sitting by designation.

parole term for life. His appeal challenges the district court's denial of his motions (1) to disclose the identity of the government's confidential informant and (2) to suppress evidence seized from Salgado's apartment.

1. The charges against Salgado arose out of a transaction in which he sold an ounce of cocaine to a Chicago police officer, Lett, for $1,500. The transaction was arranged by a confidential government informant named Alan, and the sale took place in Alan's home and in his presence. Before trial, Salgado moved the court to order the government to reveal the names of its confidential informants, in particular one who had been a "material witness" to the transaction—who was of course Alan. The government opposed the motion because the informant was involved in other undercover investigations and his safety might be compromised by disclosure of his identity; also he had not been an active participant in

the offenses charged and the government didn't intend to call him as a witness. The court denied the motion to disclose. At trial Lett testified that "Al" had introduced him to Salgado and had given Salgado both a knife to cut the foil in which the cocaine was wrapped and a plastic bag in which to place the cocaine sold to Lett. He also testified that Salgado had told him that Al would know where to reach Salgado for larger cocaine purchases. Defense counsel then renewed his motion for disclosure of "Al's" identity, arguing that he needed to interview him in order to determine whether Salgado might have a defense of entrapment. The court granted the motion and ordered that Salgado's counsel be allowed to interview the informant at the office of the U.S. Attorney. This was done the same afternoon, a Friday. Trial was to resume, and did resume, on Monday. When trial resumed, the defense did not call Alan as a witness, or

offer any evidence concerning his role in the transaction, or request a continuance to enable a more thorough investigation of Alan's role, although the judge had indicated he would grant a continuance if an adequate investigation could not be conducted before the trial resumed. No doubt, Salgado's counsel lost interest in Alan because his statements at the interview confirmed Lett's version of the transaction, thus scotching the possibility of using Alan to establish a defense of entrapment.

In these circumstances it is academic whether the district judge's initial ruling, denying the motion to reveal Alan's identity to the defense, violated the standard of Roviaro v. United States, 353 U.S. 53 (1957), which requires comparing the defendant's need for access to the informant to prepare his defense with the physical danger to the informant, and with the danger of compromising

other government investigations, if access is granted. The judge eventually granted the motion, and there is no indication that Salgado was prejudiced by the delay. If defense counsel had needed more time to explore Alan's role in the transaction he could have asked for a continuance—was indeed invited by the judge to do so. But as the interview with Alan produced no suggestion that Salgado might have been entrapped into selling cocaine to officer Lett—an inference anyway highly improbable in light of the extensive evidence that Salgado was selling drugs on a large scale—defense counsel naturally saw no point in pursuing the matter of Alan's participation in the transaction any further. United States v. Tucker, 552 F.2d 202 (7th Cir. 1977), on which Salgado relies, thus is inapposite.

We reject Salgado's argument that the results of the interview must be disregarded

on the ground that Alan was intimidated by being interviewed at the U.S. Attorney's office in the presence of federal agents. He was a government informant, and therefore potentially at risk; it would have been as "intimidating" to be told to go to defense counsel's office for an interview. Salgado argues that Alan should have been interviewed in "neutral surroundings," without specifying where they might be found.

2. The more difficult issue relates to the motion to suppress. When Salgado left Alan's home after selling the ounce of cocaine to officer Lett, federal agents followed him and after a half hour arrested him on the street, searched him, and found several keys, a portable telephone, and a receipt from a lock company. The receipt revealed that the company had, a few days earlier, rekeyed the door lock to an apartment at 2580 West Golf Road in a suburb of Chicago (the sale of

cocaine and the arrest had occurred in Chicago), for a customer named "Salgado."

During the negotiations with Lett, Salgado had used his portable telephone to summon an associate, Bernal—who, as a security precaution, was driving around with the cocaine for the deal—to Alan's home to complete the deal. After Bernal arrived, Salgado was called on the portable phone, had a conversation in Spanish, and then told Lett, "You see, I'm a busy man. That was an order for five kilos."

When Bernal left, the agents followed him too, arrested him, and found in his car what appeared to be additional cocaine that Bernal had brought to Alan's residence but had not sold to Lett. Bernal told the agents that the cocaine had come from 2600 West Golf Road, and they went there, and encountered the agents who had arrested Salgado and who had then proceeded with Salgado's keys to 2580. 2580

West Golf Road and 2600 West Golf Road are two apartment buildings, under common management, located about 100 yards apart. The janitor told the agents that Salgado had moved recently to 2580. Bridges, a Chicago police officer who (like Lett) was working with the federal drug agents, used the keys taken from Salgado to open Salgado's apartment. The apartment was unfurnished and there was no one in it. Bridges, accompanied by federal agents, glanced in each room. They touched nothing and opened no closets or other closed areas. Bridges saw a white plastic box, a balance scale, and a money-counting machine. He and the agents sealed the apartment, then waited in the hallway.

About four hours later another group of agents appeared with a search warrant and made a thorough search. They seized the items that Bridges had seen, plus much else besides, including a large amount of cocaine. The

warrant was based on an affidavit by officer Lett describing the circumstances in which Salgado and Bernal had been arrested and establishing that the apartment to be searched was indeed Salgado's and was probably the place where Bernal had gotten the cocaine. The warrant authorized the seizure of cocaine, currency, scales, packaging materials, etc., but did not refer specifically to anything that officer Bridges (or the agents accompanying him) had seen. Nor had Lett's affidavit, on the basis of which the warrant was issued, referred to anything that Bridges' group had seen. Another warrant was obtained later and executed but it need not be discussed separately.

Salgado argues that the initial search of the apartment by Bridges and others (but we shall ignore the others to simplify exposition) violated the Fourth Amendment. The government argues that, even if this were

so, it would not help Salgado. The only remedy against an unlawful search, in a criminal proceeding, is the suppression of its fruits; and since the evidence used against Salgado was obtained not from the initial search but from the execution of a warrant that had been issued without any reliance on what Bridges had seen, there were no fruits. Bridges' search was immaterial.

The matter is more complicated than this, in two respects. The first and lesser is that the absence of any causal connection between Bridges' search and the issuance of the warrant is not clear as the government asserts. Granted, neither the warrant itself, nor Lett's affidavit on which the warrant was based, refers to anything Bridges saw. But Lett and his associates might not have sought a warrant had they not known from Bridges' search that executing such a warrant would yield valuable evidence for trial. This

assumes of course that whoever participated in the decision to seek the warrant had spoken to Bridges, but that is entirely possible. The government says its prosecutors who applied for the warrant didn't know about Bridges' search, and in support it cites to a page in the appendix. The cited page does not support the statement, and in any event the government does not claim that the drug agents who advised the prosecutors to seek a search warrant did not know about the search and did not give them information obtained from it, without disclosing the source.

Despite this, we think it reasonably plain that the search warrant would have been applied for, issued, and executed even if Bridges had never conducted the allegedly unlawful search. The arrest of Bernal with cocaine—Salgado's cocaine—in his possession, coupled with Bernal's statement that it came from 2600 West Golf Road and the janitor's

that Salgado had moved recently from 2600 to 2580, made it more than likely that a search of Salgado's apartment at 2580, which the arresting agents knew Salgado had recently had rekeyed, would turn up contraband or other evidence of Salgado's drug dealings. Thus, information in the agents' possession that owed nothing to Bridges' search abundantly established probable cause for obtaining a warrant—so much so that the agents would have been derelict in their duty had they failed to apply for a warrant based just on what they knew, independently of what Bridges learned and may or may not have told them. Since the warrant would have been obtained and executed even if Bridges had never made his search, Salgado was not hurt by the search, at least in this criminal proceedings. Segura v. United States, 468 U.S. 796 (1984), a factually similar case, is controlling on this point.

Our conclusion that the warrant was not "tainted" by the earlier search might seem to end the case, but it merely brings on the second and bigger complication. Salgado argues that even if Bridges' search did not taint the evidence obtained only by virtue of the warrant—that is, the evidence that Bridges had never laid eyes on and therefore could not have been thought to have seized before the execution of the warrant—the evidence that Bridges did see was seized in the moment when Bridges saw it (during what Salgado contends is an illegal search) and thus could not have been seized later by the execution of the warrant. And that evidence, he contends, must be suppressed regardless of the sufficiency of Lett's affidavit.

The idea that when Bridges saw something he "seized" it, so that when a different group of officers came along later and carted it off pursuant to their search warrant they were not

"seizing" it, is semantically intriguing but is unrelated to the policies that animate and limit the exclusionary rule that has been grafted onto the Fourth Amendment. The legal issue is whether the fruits of a search and seizure made pursuant to a valid warrant, amply supported by probable cause obtained without violating anybody's rights, should be excluded from a criminal proceeding because another officer made an illegal search, assuming it was illegal. We think the answer is "no." The exclusionary rule is a sanction, and sanctions are supposed to be proportioned to the wrongdoing that they punish. The exclusionary rule punishes the government for obtaining evidence by unconstitutional means. It does this by forbidding the government to use such evidence to convict the person whose constitutional rights it violated. It does not go further and forbid the government to convict him on the basis of lawfully obtained

evidence. It thus does not seek to make the person whose rights have been violated better off than he would have been if no violation had occurred. We conclude that the exclusionary rule does not require the exclusion of evidence that would have been obtained lawfully, just in order to punish a search that did not harm the defendant in any sense relevant to a criminal proceedings, because the search was not a necessary step in obtaining evidence used to convict him. Since the evidence would have been obtained anyway, the alleged violation of Salgado's rights was not a cause, in the legal sense, of his conviction. Maybe Salgado's privacy was invaded, though in rather an ethereal sense, by the fact that Bridges laid eyes on his drug paraphernalia. But for such invasions the only remedy is a tort remedy unless evidence that would not otherwise have been obtained is

used in a criminal proceeding against the owner of the paraphernalia.

Salgado argues, however, that the Supreme Court's decision in Segura requires the exclusion of the things Bridges saw. Segura was arrested in the lobby of his apartment building. The arresting officers took him to his apartment and entered it without his permission or that of the other occupants, conducted a cursory "glance around" search similar to Bridges' search in this case, and then secured the premises for 19 hours while a search warrant was obtained and executed. The court of appeals held that the initial search was illegal, because there wasn't the kind of emergency ("exigent circumstances," in legalese) that would justify searching a residence without a warrant (or consent); so the items seen during that search had to be suppressed. The government did not seek further review of this part of the court of

appeals' decision. The court of appeals also held, however, that the search warrant, not having been based on the initial (and in the court's view unlawful) search, was valid; hence the items seized pursuant to it, other than the items seen in the initial search, were admissible. The only issue considered by the Supreme Court was the admissibility of these other items. Our case involves the admissibility of the items first seen, then seized. Salgado argues that even if the warrant was not tainted by the search, items seen in that search and thereby (he argues) "seized" could not be "reseized" later, however valid the warrant pursuant to which they were seized.

We disagree that the Supreme Court's decision supports Salgado. The issue of the admissibility of the "seen" items was not before the Supreme Court, those items having been held inadmissible in a part of the court

of appeals decision that the government did not seek further review of. The closest the Supreme Court came to saying that the initial search required exclusion of the items seen in it was in the statement, "As the Court of Appeals held, absent exigent circumstances, the entry may have constituted an illegal search, or interference with petitioners' privacy interests, requiring suppression of all evidence observed during the entry." Id. at 811 (emphasis in original). This passage not only is dictum (i.e., removable without damage to the rest of the opinion), but it appears in a part of the opinion that only two members of the Court joined, see id. at 797.

Thus Segura does not answer the question whether illegally seized evidence (if sight is seizure) can ever be cured of its taint by being "reseized" under a lawful warrant—that is, a warrant not dependent on information obtained from the illegal seizure. Suppose

one team of officers seizes a piece of evidence illegally for which another team has already obtained, but not yet executed, a lawful search warrant—which is one way to describe the present case. Then even if the initial search and seizure had never taken place the evidence would still have come into the hands of the government lawfully and could have been used in the defendant's trial. There would be no closer causal relationship between the initial search and the introduction of evidence at trial than in a case where the police have two independent sources of information regarding the location of a corpse, one source having been coerced illegally, the other being lawful; evidence of the location, having an independent untainted source, would be admissible. Silverthorne Lumber Co. v. United States, 251 U.S. 385, 392 (1920) (Holmes, J.); Nix v. Williams, 467 U.S. 431, 441-44 (1984) (dictum); United States v.

Palumbo, 742 F.2d 656, 659-60 (1st Cir. 1984). This principle, which underlies our earlier holding that the seizure of the items not seen by Bridges was not tainted by Bridge's search, applies equally to the issue whether the search made it impossible for the items he did see to be seized later pursuant to a valid warrant, on the theory that what is seen is seized and cannot be reseized. The considerations are the same. For constitutional violations that do not increase the victim's risk of being convicted of a crime, because they do not produce evidence that would not have been obtained without a violation, the victim's remedy is a tort suit rather than to have his conviction set aside.

Our conclusion is that whether there is an interim illegal seizure of evidence is irrelevant to the issue of exclusion, provided there is (as there is here) very great confidence that the evidence would have been

obtained for use at trial even if there had not been that seizure. This conclusion agrees with that reached by the other courts of appeals in similar cases. See United States v. Silvestri, 787 F.2d 736 (1st Cir. 1986), and cases cited there. It is also strongly supported by the Supreme Court's recent endorsement, in the Nix case, of the "inevitable discovery" exception to the exclusionary rule, see 467 U.S. at 444-48, and by the Court's rationale: the police should not be put "in a worse position than they would have been in if no unlawful conduct had transpired," id. at 445 (emphasis in original). Yet that would be the result if because of Bridges' search the government were forbidden to introduce evidence that would have been obtained if that search had never taken place. A contrary result was reached in United States v. Griffin, 502 F.2d 959, 961

(6th Cir. 1974)(per curiam), but that was before Nix was decided.

We do not suggest that in cases where a warrant is necessary for a lawful search, the government can use evidence seized without a warrant if it can show that it would have gotten a warrant if it had asked for one. That would defeat the purpose of requiring a warrant, which is to interpose a neutral judicial officer between the police and its quarry and also (and maybe more important) to require that the grounds for probable cause be set forth before rather than after the search—after is too easy. To excuse getting a warrant on such grounds would be like saying that lynching a man is okay provided you have a well-grounded belief that if tried he would have been convicted and sentenced to death and the sentence carried out. But in this case the government did obtain a warrant. The only question is whether the warrant should be

treated as a nullity regarding those items that Bridges had seen (and maybe should not have seen) earlier. We hold that the items that Bridges saw and that later were seized pursuant to a valid warrant were admissible at his criminal trial even if Bridges can be said to have "seized" them by seeing them in the course of his search.

We therefore need not consider, and do not decide, whether the search Bridges conducted was lawful. On the rather similar facts of Segura the Second Circuit, in the part of its decision not reviewed by the Supreme Court, held that the initial search had been illegal. See United States v. Segura, 663 F.2d 411, 414-15 (2d Cir. 1981). The Second Circuit was unwilling to embrace the proposition that any time you arrest a drug dealer you can enter his home without a search warrant in order to prevent any confederates who may be lurking there from destroying evidence. Courts take a

very hard line against the search of a person's home without a warrant (or consent, but that is not a factor here), and therefore demand a genuine showing of emergency before they will excuse the failure of the police to get a warrant. See, e.g., Welsh v. Wisconsin, 466 U.S. 740, 748-54 (1984); Llaguno v. Mingey, 763 F.2d 1560, 1564 (7th Cir. 1985) (en banc) (plurality opinion). A mere possibility that evidence will be destroyed—a possibility that exists any time a drug dealer is arrested outside of his home or other place of (illicit) business—is not enough. Otherwise the requirement of a warrant would have little meaning in the investigation of drug crimes. A man who lived in New York might be arrested on a trip to Florida, and the police would argue that they could search his home in New York; maybe he had an arrangement with confederates there whereby if he didn't call in at stated

intervals they should clear out with all the evidence.

The present case is not quite so stark. The police knew that Salgado had at least one confederate (Bernal), that Salgado's apartment almost certainly was the center of the drug operation and the place where the drugs were stored for distribution, and that Salgado was carrying around a portable telephone, implying that he was in continuous telephonic contact—with Bernal certainly but possibly with someone else as well, someone at the apartment who might become alarmed either if Salgado did not call in or if he did not answer his portable phone when called on it. The person who called Salgado may not have been the customer for the five kilos but an associate of Salgado's, relaying an order received at the apartment. The size of the "order" (assuming Salgado wasn't just puffing) was indicative of a large operation, not a two-man

(Salgado and Bernal) operation. Maybe the situation presented an emergency justifying the agents in securing Salgado's apartment while they got a warrant. Some decisions have upheld quick security checks in comparable circumstances. See, e.g., United States v. Vasquez, 638 F.2d 507, 531-32 (2d Cir. 1980); United States v. Webster, 750 F.2d 307, 326-28 (5th Cir. 1984). Others, however, have condemned them, see, e.g., United States v. Veillette, 778 F.2d 899, 902-03 (1st Cir. 1985); United States v. Kolodziej, 706 F.2d 590, 595-97 (5th Cir. 1983), and maybe this circuit must be ranged on the side of the condemnors on the strength of United States v. Gamble, 473 F.2d 1274, 1277 (7th Cir. 1973), and United States v. Cooks, 493 F.2d 668, 672 (7th Cir. 1974). One can argue that the officers in this case should have taken additional steps to find out whether there really was anyone in Salgado's apartment, by

asking the janitor or neighbors or simply by listening at the door for signs of activity inside. The counterargument is that judges have no competence to evaluate the minutiae of police practice and the relative effectiveness of alternative tactics for securing potential evidence from destruction.

We need not weigh these arguments in this case. We hold that the items seen by officer Bridges were lawfully seized later pursuant to a valid warrant, even if the initial search was (though we do not decide whether it was) unlawful.

AFFIRMED.

A true Copy:

Teste: /s/ J. Grabowski, Deputy
Clerk of the United States Court
of Appeals for the Seventh Circuit

United States of America vs.

JORGE SALGADO
DEFENDANT

United States District Court for THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
DOCKET NO. 85 CR 357-1

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date 12 17 85

COUNSEL

X WITH COUNSEL DENNIS A. BERKSON

PLEA

X GUILTY, and the court being satisfied that there is a factual basis for the plea (sic)

FINDING & JUDGMENT

There being a verdict of
X GUILTY.

Defendant has been convicted as charged of the offense(s) of knowingly, willfully and unlawfully possessing and distributing cocaine, a Schedule II Narcotic Drug Controlled Substance IN VIOLATION OF TITLE 21, UNITED STATES CODE, SECTIONS 841(a)(1); SECTION 846(1) and SECTION 843(b) as charged in all counts of the indictment

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and

DISTRICT CLERK'S RELEVANT DOCKET ENTRIES

12/17/85 63 Sentencing of defendant (Counts 1-5) (The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWENTY (20) YEARS on all counts. Said sentence on each of counts 1 through 5 to run concurrently with each other. IT IS ORDERED that the defendant is fined in the sum of $500,000.00. Any property of value acquired through the civil forfeiture proceeding is to be credited toward the $500,000.00 fine. IT IS FURTHER ORDERED that the defendant shall serve a special parole term for life.) (JUDGE NORDBERG) (Dkt'd 12/26/85).

12/20/85 Issued judgment and commitment to U.S. Marshal (Counts 1-5) (Dkt'd 12/26/85)

64 Order filed (Judgment and commitment order of December 17, 1985 is corrected to read "IT IS FURTHER ORDERED that the defendant shall serve a special parole term for life under counts 2 and 3.") (JUDGE NORDBERG) (Dkt'd 12/26/85).

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Name of Assigned Judge JOHN A. NORDBERG

Case Number 85 CR 357-1 Date December 20, 1985

Case Title UNITED STATES V. JORGE SALGADO

*****

DOCKET ENTRY: (The balance of this form is reserved for notations by court staff.)

(1) Judgment is entered as follows:

Judgment and commitment order of December 17, 1985 is corrected to read "IT IS FURTHER ORDERED that the defendant shall serve a special parole term for life under counts 2 and 3."

*****

Document #

64

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff,	)	
	)	No. 85 CR 357
v.	)	
	)	Judge John A. Nordberg
JORGE SALGADO and HERNANDO BERNAL,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

*****

Motions of Salgado and Bernal

1. Motion to Suppress Evidence

Defendant's motion to suppress evidence obtained from searches of Apartment No. 211 at 2580 W. Golf Road is denied. The searches were conducted pursuant to valid warrants, and defendants have raised no facts which would negate the validity of such warrants.

*****

E N T E R:

/s/ John A. Nordberg
JOHN A. NORDBERG
United States
District Judge

Dated: September 5, 1985

SEARCH WARRANT ON WRITTEN AFFIDAVIT

UNITED STATES DISTRICT COURT	Northern District of Illinois

UNITED STATES OF AMERICA
V.

Apartment, 211 of 2580 Gulf Road Glenview, Illinois	TO: Augustus Lett, Chicago Police Officer and DEA Task Force Agent and other DEA and Task Force agents.

Affidavit(s) having been made before me by the below-named affiant that he/she has reason to believe that (on the person of) (on the premises known as) Apartment 211 of 2580 Gulf Road, Glenview, Illinois.
in the Northern District of Illinois there is now being concealed certain property, namely Cocaine, United States Currency, books, papers, documents, weighing scales, and other packaging materials.

and as I am satisfied that there is probable cause to believe that the property so described is being concealed on the person or premises above-described and the grounds for application for issuance of the search warrant exist as stated in the supporting affidavit(s).

YOU ARE HEREBY COMMANDED to search on or before June 7, 1985 (not to exceed 10 days) the person or place named above for the property specified, serving this warrant and making the search (in the daytime — 6:00 A.M. to 10:00 P.M.) (at any time in the day or

night)* and if the property be found there to seize it, leaving a copy of this warrant and receipt for the property taken, and prepare a written inventory of the property seized and promptly return this warrant to Magistrate Balog as required by law.

NAME OF AFFIANT	SIGNATURE OF JUDGE** OR U.S. MAGISTRATE	DATE/TIME ISSUED
Augustus Lett	/s/James T. Balog	8:08 pm 5-31-85

---

* If a search is to be authorized "at any time in the day or night" pursuant to Federal Rules of Criminal Procedure Rule 41(c), show reasonable cause therefor.

AFFIDAVIT FOR SEARCH WARRANT

United States District Court	Northern District of Illinois
United States of America vs. Apt 211 of 2580 Gulf Road, Glenview, Illinois	Name ... of Federal Magistrate Magistrate James T. Balog

The undersigned being duly sworn deposes and says: That he/she has reason to believe that

☒ on the premises known as — Northern district of Illinois

Apartment 211 of 2580 Gulf Road, Glenview, Illinois.

The following property is concealed:

Cocaine, United States currency, books, papers, documents, weighing scales, and other packaging materials.

Affiant alleges the following grounds for search and seizure[2]

The above described items are contraband, fruits, and evidence of the crime, 21 U.S.C. §841(a)(1).

☐ See attached affidavit which is incorporated as part of this affidavit for search warrant.

Affiant states the following facts establishing the foregoing grounds for issuance of a Search Warrant

---

[2] If a search is to be authorized "at any time in the day or night" pursuant to Federal Rules of Criminal Procedure 41(c), show reasonable cause therefor.

I, Augustus Lett, depose and state as follows, under oath:

1. I am a Chicago Police officer assigned to the DEA/Chicago Police Department Task Force. I have been a police officer for 24 years, and I have 24 years experience in drug enforcement.

2. At about 2:00 P.M. on todays date, May 31, 1985, a confidential informant told me that the subject Jorge Salgado would sell to me in an undercover capacity a kilogram of cocaine for $45,000.

3. Pursuant to this introduction, I met with Mr. Salgado at 5521 W. Warwick, Chicago, Illinois. Mr. Salgado arrived at about 2:30 P.M., and he had with him a black portable telephone. Mr. Salgado stated he did not carry the stuff, but rather had someone else do it for him. He further stated that the person helping him would arrive soon, and he wanted to see the money.

4. I then went outside with Salgado and met with undercover Task Force Agent Clarence Travis who was waiting in a car nearby. Agent Travis displayed a roll of bills totalling $45,000.00 which Salgado counted and returned.

5. I then went back to the Warwick house with Salgado. At this time a latin male was present. Present on the table was a brown sealed package about 15 inches long, 6 inches wide and 3 inches high. Salgado opened the package revealing a large plastic bag containing chunky white powder. The total amount of the powder looked to me to be about one kilogram of cocaine. Salgado said it was "good stuff". Salgado agreed to sell me for $1500 one ounce to test. I then purchased the one ounce from Salgado and left at about 2:50 P.M.

6. I then field tested the ounce of white powder Salgado sold me and it tested positive for cocaine.

7. While at the Warwick residence, Salgado recieved (sic) a telephone call on his portable phone. He said he just got an order for five kilograms.

8. I then related to the other Task Force Agents working with me on this case the above described events.

9. I was told by Task Force Agents working with me on this case as follows: Surveillance Agents saw Salgado and the Latin male exit 5521 W. Warwick after I did at 2:50 P.M. Surveillance Agents followed both men, who drove off in separate vehicles. Agents then arrested both men. In the Latin males possession was the ppackage described in paragraph 5 above, containing nearly a kilogram of white powder.

10. After the arrest of the Latin male, he was advised of his constitutional rights and made the following statement to Task Force Agent Maurice Dailey:

a. This was the second time that he had done this for Salgado.

b. Salgado had just told him to take the kilogram to a particular apartment in Glenview, Ill. This was the apartment where the Latin male had obtained the kilogram of cocaine. Salgado said to go to that apartment and get five more kilograms and then meet with Salgado.

11. Agent Daley (sic) told me as follows:

a. the latin male agreed to take agent Daley (sic) to the Glenview apartment, which he did. The latin male indicated the apartment building, which was 2580 Gulf Road, Glenview, Illinois.

b. Agent Daley (sic) checked with the building manager at the address who said that Mr. Salgado lived in apartment 211.

c. Agent Daley (sic) went to apartment 211, knocked on the door, and received no response. Agent Daley (sic) was able to insert in the door a key that was seized from Salgado when he was arrested.

d. Agent Daley (sic) and other Task Force Agents are now securing the apartment from the hallway outside of it.

AUGUSTUS LETT, Task
Force Agent

James Balog, Magistrate
United States District Court
Northern District of Illinois

Dated: _____

RETURN

DATE WARRANT RECEIVED	DATE AND TIME WARRANT EXECUTED	COPY OF WARRANT AND RECEIPT FOR ITEMS LEFT WITH
May 31, 1985	May 31, 1985 - 8:30 pm	Apt. 211, 2580 Golf Rd., Glenview, Il.

INVENTORY MADE IN THE PRESENCE OF

Task Force Agent Knute Nyman

INVENTORY OF PROPERTY TAKEN PURSUANT TO THE WARRANT

1. White powder contained in one clear plastic bag wrapped in tan tape, further contained in a white plastic box wrapped in tan tape (gross weight) 1251 grams.

2. White powder contained in one white plastic box (gross weight) 349 grams.

3. White powder contained in 12 clear plastic bags further contained in tin foil paper and tape further contained in white plastic boxes wrapped in tan tape and further contained in brown cardboard box wrapped in tan tape and labeled with a shipping label to COLTOURS TRAVEL BUREAU, 2750½ West Devon, Chicago, Il. 60659. (gross weight) 16,800 grams.

4. One Ohaus triple beam scale - Serial #29374.

5. One blue suitcase containing one green ledger plus miscellaneous papers and narcotics paraphenalia (sic).

CERTIFICATION

I swear that this inventory is a true and detailed account of all the property taken by me on the warrant.

_____

Subscribed, sworn to, and returned before me this date.

_____ _____

U.S. JUDGE OR MAGISTRATE DATE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 85 CR 357
vs.	)	Judge John A.
	)	Nordberg
JORGE SALGADO	)	

GOVERNMENT'S NOTICE TO DEFENDANT SALGADO
PURSUANT TO 21 U.S.C. § 851(a)(1)

The UNITED STATES OF AMERICA, by and through ANTON R. VALUKAS, United States Attorney for the Northern District of Illinois, hereby gives notice to defendant JORGE SALGADO of its intent to seek increased punishment for any of the charged offenses he is convicted of pursuant to 21 U.S.C. §§ 851(a)(1) and 841.

The enhanced penalty provisions of 21 U.S.C. § 841 are applicable because of defendant JORGE SALGADO'S September 9, 1983 Illinois conviction for possession of controlled substances with intent to deliver in the case of People v. Jorge E. Salgado, No.

83-156 before Judge Bailey of the Cook County Criminal Courts.

Because of the enhanced penalty provisions of 21 U.S.C. § 841 it is the government's position that the following maximum penalties apply to the Counts charged in the indictment:

Count 1 - 40 years imprisonment, $500,000 fine.

Count 2 - 30 years imprisonment, $250,000 fine, plus minimum special parole of six years up to maximum of life.

Count 3 - 40 years imprisonment, $500,000 fine.

Count 4 - 40 years imprisonment, $500,000 fine.

Count 5 - 4 years imprisonment, $30,000 fine.

Respectfully submitted,

ANTON R. VALUKAS
United States Attorney

BY: /s/ Ruben Castillo
RUBEN CASTILLO
Assistant United
States Attorney

/s/Robert B. Breisblatt
ROBERT B. BREISBLATT
Assistant United
States Attorney
219 South Dearborn Street
Room 1500
Chicago, Illinois 60604
353-5341 & 353-5489

RC:RBB:kf
10-15-85

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 85 CR 357
vs.	)	
	)	
JORGE SALGADO and	)	
HERNANDO BERNAL	)	

GOVERNMENT'S CONSOLIDATED ANSWER TO DEFENDANTS' PRETRIAL MOTIONS

The UNITED STATES OF AMERICA, by its attorney, ANTON R. VALUKAS, United States Attorney for the Northern District of Illinois, hereby responds as follows to the pretrial motions filed by defendants Jorge Salgado ("Salgado") and Hernando Bernal ("Bernal").

*****

RESPONSE TO MOTION TO SUPPRESS EVIDENCE FILED BY DEFENDANTS BERNAL AND SALGADO

A. Search of the Glenview Apartment

Both defendants Bernal and Salgado have filed motions to suppress various items and fingerprints recovered from a Glenview apartment. Both of these motions, however,

contain factual misstatements. The searches of apartment no. 211 located at 2580 W. Golf Road in Glenview were conducted pursuant to search warrants. The apartment was never searched without a search warrant. The government has attached hereto two different search warrants and affidavits that were used in this case. The first search warrant was obtained and executed on Friday, May 31, 1985 at an apartment no. 211 located at 2580 W. Golf Road, Glenview, Illinois, which had been leased by defendant Salgado. This search warrant resulted in the seizure of approximately 35 pounds of cocaine, a Ohaus triple beam scale, a Glory GFA 120 money counter, a blue suitcase containing a green ledger and various narcotics paraphenalia (sic).

Thereafter, on June 11, 1985 a second search warrant was obtained for the same apartment to conduct fingerprint analysis of

the apartment. Eight fingerprints of defendant Salgado were identified from the latent prints taken from the Glenview apartment.

The Seventh Circuit has recently held that a defendant bears the burden of proving the illegality of a search conducted pursuant to a warrant. United States v. Longmire, __ F.2d __, No. 84-1821 (May 3, 1985). There the Court stated (slip op. at 9):

> "If the search or seizure was effected pursuant to a warrant, the defendant bears the burden of proving its illegality. See 3 LA FAVE, SEARCH AND SEIZURE § ____, at 499 (2d ed. 1981). Where the police have acted pursuant to a warrant, the independent determination of probable cause by a magistrate gives rise to a presumption that the arrest or search was legal."

The defendants have failed to meet their burden. This Court's own review of the search warrant affidavits will conclude that the issuing magistrates had a substantial basis for concluding that a

search would uncover evidence of wrongdoing. See Illinois v. Gates, 462 U.S. 213, 236 (1983); Jones v. United States, 362 U.S. 257, 271 (1960). Thus, defendants' motions to suppress should be denied.

*****

Neither Bernal nor Salgado's motions to suppress warrant a hearing. Before a moving party will be entitled to a hearing, his motion must allege relevant factual issues with definiteness, clarity, and specificity, in terms that are neither general nor conclusory. Nechy v. United States, 665 F.2d 275, 776 (sic) (7th Cir. 1981); United States v. Hickok, 481 F.2d 377, 378-9 (9th Cir. 1973); United States v. Poe, 462 F.2d 195 (5th Cir. 1972), cert.denied, 414 U.S. 845 (1973). Since the defendants have failed to allege any specific facts

whatsoever, their motions to suppress must be denied without a hearing.

Respectfully submitted,

ANTON R. VALUKAS
United States Attorney

BY: /s/ Ruben Castillo
RUBEN CASTILLO
Assistant United
States Attorney

BY: /s/ Robert B. Breisblatt
ROBERT B. BREISBLATT
Assistant United
States Attorney
219 South Dearborn Street
Chicago, Illinois 60604
353-5341 & 353-5489

RC:kf
8-15-85

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 85 CR 357
	)	
JORGE SALGADO AND HERNANDO BERNAL,	)	
	)	
	)	
Defendants.	)	

MOTION TO SUPPRESS EVIDENCE

NOW COMES the Movant, JORGE SALGADO, by and through his attorneys, DENNIS A. BERKSON & ASSOCIATES, LTD., and moves this Honorable Court to enter an order suppressing evidence seized from Movant, and in support thereof, states as follows:

1. That your Movant is the Defendant in the above matter.

2. That on May 31, 1985, Movant was arrested by DEA task force agents.

3. That the arrest was effectuated at or in the vicinity of 5521 W. Warwick, Chicago, Illinois.

4. That on May 31, 1985, subsequent to said arrest, the DEA task force agents entered and searched the premises located at 2580 W. Golf Road, Apt. 211, in Glenview, Illinois.

5. That pursuant to that search, certain evidence which the government seeks to introduce against your Movant was seized from that premises.

6. That your Movant is allegedly the lessee of that premises.

7. That neither your Movant, nor anyone with valid authority, gave valid consent to said search and seizure.

8. That said search was not made incident to the arrest.

9. That said search was not conducted pursuant to a lawful search warrant, issued by a neutral and detached magistrate.

10. That said search and seizure were conducted without probable cause and in violation of your Movant's Fourth Amendment

rights against unreasonable searches and seizure.

11. That there exist no exigent circumstances which would in any way justify the entry and search of said premises without a lawful search warrant.

12. That subsequent to said initial search, on June 11, 1985, a federal search warrant was issued authorizing the search of Apt. 211 of 2580 Gold Road, Glenview, Illinois.

13. That pursuant to the execution of said warrant, the government seized further evidence which it seeks to introduce against Movant, including, but not limited to, fingerprint samples.

14. That this evidence seized pursuant to the warrant was unlawfully seized and must be suppressed in that it constitutes fruit of the poisonous tree.

15. That the DEA task force agents who obtained and executed said search warrant blatantly failed and neglected to exercise good faith in the procurement and execution of said warrant.

16. That upon information and belief, the affidavit submitted in order to obtain the search warrant failed to show probable cause that the premises to be searched contained contraband, in light of the fact that all evidence had already been seized by the agents pursuant to this warrantless search.

WHEREFORE, your Movant, JORGE SALGADO, prays that this Honorable Court enter an order suppressing all evidence seized from the premises located at 2580 Golf Road, Glenview, Illinois.

Respectfully submitted,

/S/ Dennis A. Berkson
DENNIS A. BERKSON &
ASSOCIATES, LTD.
ONE NORTH LASALLE STREET
CHICAGO, ILLINOIS 60602
(312) 726-7402

ATTORNEYS FOR DEFENDANT
SALGADO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 85 CR 347
vs.	)	Violations: Title
	)	21, United States
JORGE SALGADO and	)	Code, Sections
HERNANDO BERNAL	)	841(a)(1), 846,
	)	and 843(b)

The APRIL 1985 GRAND JURY charges:

1. From at least May 24, 1985, to on or about May 31, 1985, in the Northern District of Illinois, Eastern Division and elsewhere,

JORGE SALGADO and
HERNANDO BERNAL,

defendants herein, wilfully and knowingly did combine, conspire, confederate and agree together and with other persons who are unknown to the Grand Jury to commit certain offenses against the United States, to wit:

(a) to knowingly and intentionally distribute cocaine, a Schedule II Narcotic Drug Controlled Substance, in violation of Title 21, United States Code, Section 841(a)(1);

(b) to knowingly and intentionally possess with intent to distribute cocaine, a Schedule II Narcotic Drug Controlled Substance, in violation of Title 21, United States Code, Section 841(a)(1); and

(c) to knowingly and intentionally use a communication facility in committing the crime of distribution of a controlled substance, in violation of Title 21, United States Code, Section 843(b).

2. It was part of the conspiracy that defendant JORGE SALGADO would and did obtain cocaine for distribution.

3. It was further part of the conspiracy that defendant JORGE SALGADO leased apartment 211 of 2580 Gulf Road in Glenview, Illinois 60025 from UPX Corporation on May 24, 1985.

4. It was further part of the conspiracy that defendant JORGE SALGADO kept cocaine at apartment 211 at 2580 Gulf Road in Glenview, Illinois 60025.

5. It was further part of the conspiracy that defendant HERNANDO BERNAL would obtain cocaine from defendant JORGE SALGADO at

apartment 211 at 2580 Golf Road in Glenview, Illinois 60025 and defendant HERNANDO BERNAL would deliver said cocaine under defendant JORGE SALGADO's directions and orders.

6. It was further part of the conspiracy that defendant JORGE SALGADO possessed mobile phone equipment from which he conducted conversations regarding the sale of cocaine.

7. It was further part of the conspiracy that defendants JORGE SALGADO and HERNANDO BERNAL sold 50.6 grams of cocaine on May 31, 1985.

8. It was further part of the conspiracy that defendants JORGE SALGADO and HERNANDO BERNAL possessed with intent to distribute 1,348 grams of cocaine on May 31, 1985.

9. It was further part of the conspiracy that defendants JORGE SALGADO and HERNANDO BERNAL possessed with intent to distribute 18,390 grams of cocaine on May 31, 1985 at

apartment 211 at 2580 Golf Road in Glenview, Illinois 60025.

All in violation of Title 21, United States Code, Section 846.

COUNT TWO

The APRIL 1985 GRAND JURY further charges: On or about May 31, 1985, at Chicago, in the Northern District of Illinois, Eastern Division,

JORGE SALGADO and
HERNANDO BERNAL,

defendants herein, knowingly and intentionally did distribute 50.6 grams of a mixture containing cocaine, a Schedule II Controlled Substance;

In violation of Title 21, United States Code, Section 841(a)(1).

COUNT THREE

The APRIL 1985 GRAND JURY further charges:

On or about May 31, 1985, at Chicago, in the Northern District of Illinois, Eastern Division,

JORGE SALGADO and
HERNANDO BERNAL,

defendants herein, did knowingly and intentionally possess with intent to distribute 1,348 grams of a mixture containing cocaine, a Schedule II Controlled Substance;

In violation of Title 21, United States Code, Section 841(a)(1).

COUNT FOUR

The APRIL 1985 GRAND JURY further charges:

On or about May 31, 1985, at Glenview, in the Northern District of Illinois, Eastern Division,

JORGE SALGADO and
HERNANDO BERNAL,

defendants herein, did knowingly and intentionally possess with intent to distribute 18,390 grams of a mixture containing cocaine, a Schedule II Controlled Substance;

In violation of Title 21, United States Code, Section 841(a)(1).

COUNT FIVE

The APRIL 1985 GRAND JURY further charges:

On or about May 31, 1985, at Chicago, in the Northern District of Illinois, Eastern Division,

JORGE SALGADO,

defendant herein, knowingly and intentionally did use a communication facility; to wit: a mobile telephone, in committing, causing and facilitating the conspiracy to possess with intent to distribute cocaine, a Schedule II Controlled Substance, a felony under Title 21, United States Code, Section 846, as more fully described in Count One of this indictment;

In violation of Title 21, United States Code, Section 843(b).

A TRUE BILL:

/s/James H. Ebbinghaus
FOREPERSON

/s/Anton R. Valukas
UNITED STATES ATTORNEY

RC/nw/wpc

RELEVANT JURY INSTRUCTIONS
(R. 437, 439-444, 446.)

THE COURT: ***** Now, the indictment is this case is the formal method of accusing the defendant of a crime and placing him on trial. It is not evidence against the defendant and does not create any inference of guilt.

The defendant is charged with the crimes of conspiracy to possess and distribute cocaine, distribution of cocaine, possession of cocaine with intent to distribute and the use of a communications facility, that is, a mobile telephone, to facilitate that conspiracy.

The defendant has denied that he is guilty of each charge.

*****

In Count 1 the defendant is charged with a violation of Title 21, United States Code, Section 846, which provides: "Any person who attempts or conspires to commit any offense defined in this subchapter," brackets,

"commits an offense against the United States."

Now, the term "any offense" defined in this subchapter includes possession of cocaine with intent to distribute it, distribution of cocaine and use of a communication facility to distribute cocaine.

You are instructed that cocaine is a Schedule II controlled substance.

In order to establish the offense of conspiracy that the government must prove these elements beyond a reasonable doubt: One, that the alleged conspiracy existed, and, two, that the defendant knowingly and intentionally became a member of the conspiracy.

A conspiracy is a combination of two or more persons to accomplish an unlawful purpose.

A conspiracy may be established even if its purpose was not accomplished.

In determining whether the alleged conspiracy existed you may consider the actions and statements of all of the alleged participants. The agreement may be inferred from all of the circumstances and the conduct of all of the alleged participants.

In determining whether the defendant became a member of the conspiracy you may consider only the acts and statements of that particular defendant.

To be a member of the conspiracy the defendant need not join at the beginning or know all of the other members or the means by which the purpose was to be accomplished. The government must prove beyond a reasonable doubt from the defendant's own acts and statements that he was aware of the common purpose and was a willing participant.

Now, to sustain the charge of conspiracy to possess and distribute cocaine as charged in Count 1 the government must prove the

following propositions: First, that a conspiracy existed to possess and distribute cocaine as described in Count 1, and, second, that the defendant, Jorge Salgado, knowingly and intentionally became a member of the conspiracy.

If you find from your consideration of all of the evidence that each of these propositions has been proved beyond a reasonable doubt then you should find the defendant guilty of Count 1.

If, on the other hand, you find from your consideration of all of the evidence that any of these propositions has not been proved beyond a reasonable doubt then you should find the defendant not guilty of Count 1.

In Counts 2, 3 and 4 the defendant is charged with a violation of Title 21, United States Code, Section 841(a)(1), which provides: "It shall be unlawful for any person knowingly or intentionally to

distribute or dispense or possess with intent to distribute or dispense a controlled substance."

The law recognizes two kinds of possession, actual and constructive possession.

A person who knowingly has direct physical control over a thing at a given time is then in actual possession of it.

A person who, although not in actual possession, knowingly has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it.

The law recognizes also that possession may be sole or joint. If one person alone has actual or constructive possession of a thing, possession is sole.

If two or more persons share actual or constructive possession of a thing possession is joint.

You may find that the element of possession, as that term is used in these instructions, is present if you find, beyond a reasonable doubt, that the defendant has actual or constructive possession, either alone or with others.

Now, to sustain the charge of distribution of 50.6 tenth grams of cocaine as charged in Count 2 the government must prove the following propositions: First, that the defendant distributed a quantity of a mixture containing cocaine and, second, that at the time the defendant distributed the cocaine he did so knowingly and intentionally.

If you find from your consideration of all of the evidence that each of these propositions has been proved beyond a

reasonable doubt then you should find the defendant guilty of Count 2.

If, on the other hand, you find from your consideration of all of the evidence that any of these propositions has not been proved beyond a reasonable doubt then you should find the defendant not guilty of Count 2.

To sustain the charge of possession of 1348 grams of cocaine with intent to distribute as charged in Count 3, the government must prove the following: First, that the defendant possessed a quantity of a mixture containing cocaine; second, that the defendant did so knowingly, and, third, that at the time the defendant possessed the cocaine he intended to distribute it.

Now, if you find from your consideration of all of the evidence that each of these propositions has been proved beyond a reasonable doubt then you should find the defendant guilty of Count 3.

If, on the other hand, you find from your consideration of all of the evidence that any of these propositions has not been proved beyond a reasonable doubt then you should find the defendant not guilty of Count 3.

Now, to sustain the charge of possession of 18,390 grams of cocaine with intent to distribute as charged in Count 4, the government must prove the following propositions: First, that the defendant possessed a quantity of a mixture containing cocaine, second, that the defendant did so knowingly and, third, that at the time that the defendant possessed the cocaine he intended to distribute it.

If you find from your consideration of all of the evidence that each of these propositions has been proved beyond a reasonable doubt then you should find the defendant guilty of Count 4.

If, on the other hand, you should find from your consideration of all of the evidence that any of these propositions has not been proved beyond a reasonable doubt then you should find the defendant not guilty of Count 4.

To sustain the charge of the use of a communication facility to facilitate a conspiracy to possess cocaine with intent to distribute as charged in Count 5 the government must prove the following propositions: First, that the defendant used a mobile telephone as charged in Count 5; second, that such use of a mobile telephone was for the purpose of committing or facilitating a conspiracy to possess cocaine with intent to distribute which is described in Count 1 of the indictment, and, third, that the defendant's use of a mobile telephone to further the conspiracy was knowing or intentional -- my emphasis is wrong; that's

the last of that sentence. I will repeat the third again: and that the defendant's use of the mobile telephone to further the conspiracy was knowing or intentional.

If you find from your consideration of all of the evidence that each of these propositions has been proved beyond a reasonable doubt then you should find the defendant guilty of Count 5.

If, on the other hand, you find from your consideration of all of the evidence that any of these propositions has not been proved beyond a reasonable doubt then you should find the defendant not guilty of Count 5.

*****

Now, you will take these verdict forms into the jury room with you and when you have reached unanimous agreement on the verdict your foreperson should fill in and date the appropriate form as it may or may not be required and then each of you will sign it.

Now, each count of the indictment charged the defendant with having committed a separate offense. Each count and the evidence relating to it should be considered separately and a separate verdict should be returned as to each count.

Your verdict of "guilty" or "not guilty" of an offense charged in one count should not control your decision as to any other count.

RELEVANT EVIDENCE
Lett-Direct (2R. 98)

Q [Prosecutor] Let me show you what has been previously marked as Government Exhibit C-1 and ask you if you can identify that.

A Yes, sir.

Q What is it and how can you identify it?

A This is a plastic bag containing the purchased ounce of cocaine.

Bridges-Direct (2R. 212, 220-225)

Q And referring you to the red bag that is inside Group Exhibit 2-A, have you seen that before?

A Yes, sir, I have.

Q Where did you see it?

A I saw it after it was seized from Mr. Bernal.

Q And what was inside of the red bag?

A The box.

Q The white plastic box that is contained in Government Group Exhibit 2-C-A?

*****

Q Can you identify what has been marked as Group 3-C-A?

A Yes, sir, I can.

Q What is it?

A It is the white plastic box that I seized from that counter.

*****

Q What could you see inside the box?

A White powder.

*****

Q Did you recover anything from the kitchen cabinet?

A Yes.

Q What did you recover?

A It was a white plastic box.

*****

Q Okay. I am going to show you Group Exhibit 4-A; that is, Group Exhibit C Group Exhibit 4-A.

All right. Showing you C Group 4-A, can you identify that box?

A Yes, sir, I can.

Q What box is that?

A That is the white box that I recovered from the shelf.

*****

Q Did you recover anything in that bathroom closet?

A Yes.

Q What did you recover?

A A brown cardboard box containing 12 other plastic boxes identical to the one taken from the kitchen counter and identical to the one taken from Mr. Bernal.

Q Could you stand up and place an x where you recovered that brown box containing the 12 white plastic boxes and show that to the ladies and gentlemen of the jury.

A From the floor of this closet (indicating).

*****

Q Okay. I am going to show you what has been marked as C Group Exhibit 5-A.

*****

Q Can you identify those 12 boxes?

A Yes, sir. These are the 12 boxes that I took from that closet.

Q What did you do with those 12 boxes? Did you open them at all?

A I randomly opened about three of them, or four.

Q And what did you find in the boxes that you randomly opened?

A White powder.

*****

Q Were all of the 12 boxes full, to the best of your knowledge, from your handling of the 12 boxes?

A Yes. They were all of similar weight and the ones that I opened were full.

CHEMICAL TESTIMONY BY STIPULATION
(2R. 255-258)

THE COURT: At this time, then, I believe, the government has a stipulation, which is an agreement between the parties as to certain facts which shall be evidence in the case which shall be accepted by you as true.

Mr. Breisblatt.

MR. BREISBLATT: If called to testify, Terry A. Dalcason, a forensic chemist for the Department of Justice, Drug Enforcement Administration, would testify as follows: That he conducted examinations on certain exhibits that he received from agents of the Drug Enforcement -- Drug Enforcement Task Force agents and that, first, on Government's Exhibit C-1, he received Government's Exhibit C-1 and performed scientific tests upon it.

He determined that Government's Exhibit C-1 contained 28.1 grams of a white powder, of which 93 percent was cocaine.

He would further testify that he received Government's Exhibit C-2, removed the cocaine from the plastic box, sent the plastic box to the Federal Bureau of Investigation for fingerprint identification and analysis and conducted a scientific examination on the white powder therein.

He determined that the white powder in the box weighed 971 grams and was 93 percent cocaine.

THE COURT: Could we have a short side bar on this before you proceed, counsel?

MR. BREISBLATT: Yes, Judge. We don't need the court reporter on this.

(Side bar without court reporter.)

THE COURT: All right.

MR. BREISBLATT: For the record, I have been giving the jury the net weight of the substance. The gross weight of Government Exhibit 1 was 50.6 grams; the gross weight of

Government Exhibit 15 -- I am sorry, Government Exhibit C-2, was 1,350 kilograms --

THE COURT: And the reason for the difference between the gross and the net is that --

(Mr. Castillo and Mr. Breisblatt conferred.)

MR. BREISBLATT: Oh, yes. All right.

That was 1.350 kilograms or 1,350 grams. I am sorry.

THE COURT: Because that included the packaging material, and so on?

MR. BREISBLATT: Correct. That includes the packaging material.

THE COURT: And now you are on C-3?

MR. BREISBLATT: Now I am on C-3.

That he received Government Exhibit C-3 from agents of the Drug Enforcement Administration and it had a gross weight of approximately 1,253 grams; the substance was 96 percent cocaine and that he sent the

packaging it came in to the FBI lab for fingerprint analysis.

THE COURT: All right. Do you have the net weight now for that C-3?

MR. BREISBLATT: Yes. The net weight on that was 913 grams.

THE COURT: Okay. Thank you.

MR. BREISBLATT: The chemist would further testify that he received Government's Group Exhibit 5 in the original packaging, which is Government Exhibit C-5-A, I believe, from Drug Enforcement Administration agents.

The gross weight of the cocaine plus the plastic bags it was put in was 16,800 grams; the net weight was 12,067 grams and it was 93 percent cocaine.

Finally, he would testify that he received Government Exhibit C-4 from the agents and Government Exhibit C-4, the gross weight was approximately 349 grams and the net

weight wsa (sic) 40 grams and it was 92 percent cocaine.

He would further state that he sent all of the packaging material of Government Exhibit C-5-A to the Federal Bureau of Investigation for fingerprint identification and analysis.

That's the end of the stipulation between the government and the defense, your Honor.

THE COURT: All right. Again, this has been agreed to between the parties and so shall be in evidence and shall be accepted by you as true.

ADDITIONAL NOTICE OF ENHANCEMENT
(R. 465, 466.)

THE COURT: I do also want to mention because I am not sure that we have it on the record previously that the government served a notice prior to the time of trial, the Government's Notice to Defendant Salgado Pursuant to 21 U.S.C. 851(a)(1) as to the government's intention to seek increased punishment for any of the charged offenses he is convicted of pursuant to 21 U.S.C. 851(a)(1) and 841, and that is a two page document dated October 15, 1985, signed by both -- or counsel on behalf of the U.S. Attorney's Office previously served in the case.

I take it that the government persists in that, is that correct?

MR. CASTILLO: That is correct, your Honor.

THE COURT: All right.

U.S. Department of Justice NOTICE OF ACTION
United States Parole Commission
Chevy Chase, MD 20815

NAME: SALGADO, Jorge

INSTITUTION:
REGISTER NUMBER: 91840-024 Milan

In the case of the above-named the following parole action was ordered:

Continue to expiration.

(REASONS/CONDITIONS)

Your offense behavior has been rated as category EIGHT severity because it involved possession with intent to distribute cocaine, the equivalent of 15 kilograms or more at 100% purity. Your salient factor score is 6. You have been in custody a total of 17 months. Guidelines established by the Commission which consider the above factors indicate a range of 120+ months to be served before release for cases with good institutional adjustment and program achievement. After review of all relevant factors and information presented, a decision outside the guidelines at this consideration is not found warranted.

As required by law, you have also been scheduled for a statutory interim hearing December, 1991 (during the docket immediately preceding completion of the minimum term).

SALIENT FACTOR SCORE (SFS-81): Your individual salient factor score items have been computed as shown below. For an explanation of the salient factor score items, see reverse side of this form.

ITEM A = 2; B = 1; C = 2( )*; D = 0;
E = 0; F = 1 TOTAL SCORE = 6
*If five or more prior commitments, place an 'x' in the parenthesis in Item C.

Appeals procedure: You may appeal a decision to the National Appeals Board under 28 CFR 2.26.

December 1, 1986 (DATE)

North Central (REGION)

CAROL PAVILACK GETTY (COMMISSIONER)

ran (CLERK)